

AMENDED IN SENATE APRIL 13, 2015

SENATE BILL

No. 290

Introduced by Senator Vidak

February 23, 2015

An act to amend ~~Sections 5710 and 6822~~ *Section 5705* of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

SB 290, as amended, Vidak. Common interest ~~developments:~~ *developments: assessment collection: foreclosure: notice.*

The Davis-Stirling Common Interest Development Act defines and regulates common interest developments and requires that a development be managed by an association. The act requires specified procedures for the collection of delinquent assessments, including, but not limited to, a procedure for giving notice to an owner of a separate interest of foreclosure of a lien for delinquent assessments. The existing procedure requires the board of directors of an association to provide notice by personal service to an owner of a separate interest who occupies the separate interest, or to the owner's legal representative, if the board votes to foreclose upon the separate interest, as specified.

This bill would additionally allow the board to serve an owner or owner's representative with notice by substituted service, as provided.

~~The Davis-Stirling Common Interest Development Act governs the management and operation of common interest developments, except for those developments limited to industrial or commercial uses, which are governed by the Commercial and Industrial Common Interest Development Act. Each act requires specified procedures for the collection of delinquent assessments, including, but not limited to, a trustee sale.~~

~~This bill would make technical, nonsubstantive changes to these procedures.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 5705 of the Civil Code is amended to*
2 *read:*
3 5705. (a) Notwithstanding any law or any provisions of the
4 governing documents to the contrary, this section shall apply to
5 debts for assessments that arise on and after January 1, 2006.
6 (b) Prior to initiating a foreclosure on an owner's separate
7 interest, the association shall offer the owner and, if so requested
8 by the owner, participate in dispute resolution pursuant to the
9 association's "meet and confer" program required in Article 2
10 (commencing with Section 5900) of Chapter 10 or alternative
11 dispute resolution as set forth in Article 3 (commencing with
12 Section 5925) of Chapter 10. The decision to pursue dispute
13 resolution or a particular type of alternative dispute resolution shall
14 be the choice of the owner, except that binding arbitration shall
15 not be available if the association intends to initiate a judicial
16 foreclosure.
17 (c) The decision to initiate foreclosure of a lien for delinquent
18 assessments that has been validly recorded shall be made only by
19 the board and may not be delegated to an agent of the association.
20 The board shall approve the decision by a majority vote of the
21 directors in an executive session. The board shall record the vote
22 in the minutes of the next meeting of the board open to all
23 members. The board shall maintain the confidentiality of the owner
24 or owners of the separate interest by identifying the matter in the
25 minutes by the parcel number of the property, rather than the name
26 of the owner or owners. A board vote to approve foreclosure of a
27 lien shall take place at least 30 days prior to any public sale.
28 (d) The board shall provide notice by personal service *or*
29 *substituted service* in accordance with the manner of service of
30 summons in Article 3 (commencing with Section 415.10) of
31 Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure to an
32 owner of a separate interest who occupies the separate interest or
33 to the owner's legal representative, if the board votes to foreclose

upon the separate interest. The board shall provide written notice to an owner of a separate interest who does not occupy the separate interest by first-class mail, postage prepaid, at the most current address shown on the books of the association. In the absence of written notification by the owner to the association, the address of the owner's separate interest may be treated as the owner's mailing address.

~~SECTION 1. Section 5710 of the Civil Code is amended to read:~~

~~5710. (a) A sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust.~~

~~(b) In addition to the requirements of Section 2924, the association shall serve a notice of default on the person named as the owner of the separate interest in the association's records or, if that person has designated a legal representative pursuant to this subdivision, on that legal representative. Service shall be in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure. An owner may designate a legal representative in a writing that is mailed to the association in a manner that indicates that the association has received it.~~

~~(c) The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d, plus the cost of service for either of the following:~~

- ~~(1) The notice of default pursuant to subdivision (b).~~
- ~~(2) The decision of the board to foreclose upon the separate interest of an owner as described in subdivision (d) of Section 5705.~~

~~SEC. 2. Section 6822 of the Civil Code is amended to read:~~

~~6822. (a) A sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust.~~

~~(b) In addition to the requirements of Section 2924, the association shall serve a notice of default on the person named as the owner of the separate interest in the association's records or, if that person has designated a legal representative pursuant to this subdivision, on that legal representative. Service shall be in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part~~

1 ~~2 of the Code of Civil Procedure. An owner may designate a legal~~
2 ~~representative in a writing that is mailed to the association in a~~
3 ~~manner that indicates that the association has received it.~~
4 (e) ~~The fees of a trustee may not exceed the amounts prescribed~~
5 ~~in Sections 2924c and 2924d, plus the cost of service for the notice~~
6 ~~of default pursuant to subdivision (b).~~

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